LIBRARY,
SUPREME COURT, U. S.

FILED
JAN 20 1975
MICHAEL RODAK, JR., CLERK

In the

Supreme Court

of the

United States

_____ Term, 1975

No. 74-888

THOMAS RALEY,

Petitioner,

vs.

LEAGUE TO SAVE LAKE TAHOE, SIERRA CLUB, WALTER BAILEY, and BRIAN HAYES,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RONALD N. PAUL
DOWNEY, BRAND, SEYMOUR & ROHWER
555 Capitol Mall, Suite 1050
Sacramento, CA 95814
Counsel for Petitioner

CAL-CENTRAL PRESS - SACRAMENTO CALIF

SUBJECT INDEX

Page

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth District Circuit 2

Opinions Below 2

Jurisdiction 2

Questions Presented 2

Statutes, Federal Rules and Regulations Involved 3

Statement 3

Reasons for Granting the Writ 5

Conclusion 7

TABLE OF AUTHORITIES CITED

Cases

Page

Delaware River Joint Toll Bridge Commission v. Colburn 310 U.S. 419 (1940) 5, 6, 7

Delaware River Joint Toll Bridge Comm. v Miller 147 F. Supp. 270 (E.D. Pa. 1956) 7

Delaware River Joint Toll Bridge Comm. v. Stoltz 146 F. Supp. 241 (D.N.J. 1956) 7

Green v. Biddle, 21 U.S. (8 Wheat.) 1, 85-86 (1823) 6

Port Authorities Bond Holders Protective Committee v. Port of New York Authority, 270 F. Supp. 947 (S.D.N.Y. 1967) and 387 F. 2d 259 (2d Cir. 1967) 7

Revoli Trucking Corp. v. American Transport Lines 167 F. Supp. 937, 939 (E.D.N.Y. 1958) 7

Virginia v. Tennessee, 148 U.S. 503, 521 (1893) 6

Constitution

Article I, §10, Clause 3 of the United States Constitution 3, 6

Code

Judicial Code, §237(B) [the predecessor of §1257(3)] 6

Table of Statutes

28 U.S.C. §1254(1) 2

28 U.S.C. §1331(a) 2, 3, 4, 5, 7

28 U.S.C. §1257(3) 5

Public Law 91-148, 83 Stat. 360 (1969) 3

California Government Code §§66800 et seq. 3

Nevada Revised Statutes 277.190 et seq. 3

Rules

Rule 19(1) (b), Rules of the Supreme Court 5

Texts

Engdahl, Construction of Interstate Compacts: A Questionable Federal Question, 51 Va. L. Rev. 987 (1965) 5, 6

1 Sutherland, Statutory Construction §310 (1943) 6

In the

Supreme Court

of the

United States

_____ Term, 1975

No. _____

THOMAS RALEY,

Petitioner,

vs.

LEAGUE TO SAVE LAKE TAHOE, SIERRA CLUB, WALTER BAILEY, and BRIAN HAYES,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, THOMAS RALEY, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above case on November 22, 1974.

OPINIONS BELOW

The judgement of the United States District Court for the Eastern District of California is unreported but is attached as Exhibit B hereto. The judgment of the Ninth Circuit Court of Appeals is unreported but is attached as Exhibit A hereto.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was made and entered on November 22, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

The basic question presented in this case is whether or not original Federal Court jurisdiction exists under 28 U.S.C. §1331 (a). Respondents have urged two possible bases for original Federal Court jurisdiction:

1. That congressional consent to an interstate compact transforms the compact into a law of the United States within the meaning of 28 U.S.C. §1331(a); and

2. That the construction of an interstate compact requires the application of Federal "common law"

which is a law of the United States within the meaning of 28 U.S.C. §1331(a). The Circuit Court concluded that congressional consent transforms the compact into a law of the United States for purposes of original Federal jurisdiction under 28 U.S.C. §1331(a) and did not, therefore, reach the question of whether or not the construction of an interstate compact requires the application of Federal "common law" sufficient for jurisdiction under 28 U.S.C. §1331(a).

STATUTES, FEDERAL RULES AND REGULATIONS INVOLVED

The congressional consent to the Tahoe Regional Planning Agency Compact is found in Public Law 91-148, 83 Stat. 360 (1969) and is set forth in Exhibit C. This consent contains the language of the compact which is additionally found in California Government Code §§66800 et seq. (West Supp. 1975) and in Nevada Revised Statutes 277.190 et seq. (1971). Exhibit D sets forth the language of 28 U.S.C. §1331(a). Peripherally involved is Article 1, §10, cl. 3 of the United States Constitution, which requires congressional consent to interstate agreements or compacts; this is set forth in Exhibit E.

STATEMENT

In December of 1969, Congress consented, pursuant to Article 1, §10, cl. 3 of the United States Constitution, to an interstate compact entered into between the States of California and Nevada in 1968. This compact, known as the Tahoe Regional Planning Agency Com-

pact, created a regional planning agency with responsibility for the regulation and control of development within the Lake Tahoe Basin which overlaps the borders of the States of California and Nevada.

On September 20, 1973, Respondents filed an action for declaratory and injunctive relief in the U.S. District Court for the Eastern District of California. alleging. basically, that Defendant Tahoe Regional Planning Agency (hereinafter "TRPA") failed to comply with the legal requirements of the compact. Respondents contended that TRPA failed to adopt a regional plan within the time required by the compact, failed to adopt certain implementing ordinances mandated by the compact, adopted other ordinances which were defective, and failed to prepare a detailed environmental analysis as required by the compact. Respondent further alleged that TRPA granted approval to the development projects of defendants THOMAS RALEY, Park Cattle Co., and Harvey's Wagon Wheel, Inc., in violation of the compact.

Jurisdiction in the District Court was predicated solely on 28 U.S.C. §1331(a). On Defendants' motion, the District Court dismissed the action without prejudice on the ground that it lacked jurisdiction over the subject matter of Plaintiff's claim. The Circuit Court reversed the District Court's decision and ruled as a matter of first impression that congressional consent transforms an interstate compact into a law of the United States within the meaning of 28 U.S.C. §1331(a) for purposes of original federal jurisdiction.

REASONS FOR GRANTING THE WRIT

It is respectfully submitted that the question of whether or not congressional consent to an interstate compact transforms the compact into a law of the United States for purposes of original federal jurisdiction under 28 U.S.C. §1331(a) is an important question of federal law which has not been, but should be, settled by the Supreme Court [Rule 19(1)(b), Rules of the Supreme Court].

The Circuit Court expressly recognized this issue as one of first impression. Both independent research by the Circuit Court and research by counsel for all parties failed to disclose any decision by the Supreme Court or any of the Circuit Courts of Appeal dealing directly with this issue.

The Circuit Court felt that the case of *Delaware River Joint Toll Bridge Commission* v. *Colburn* [310 U.S. 419 (1940)] compelled their ruling, based upon the Law of the Union Doctrine, that the congressional consent transformed the compact into a law of the United States both for purposes of certiorari jurisdiction under 28 U.S.C. §1257(3) and for purposes of original federal jurisdiction under 28 U.S.C. §1331(a). (See Exhibit A at page 7, footnote 8]. In what appears to be the leading law review article on point [Engdahl, Construction of Interstate Compacts: A Questionable Federal Question, 51 Va. L. Rev. 987 (1965)], it is stated that this view is ". . . contrary to that which virtually every commentator and inferior court has endorsed." [*Engdahl* at page 991]. *Engdahl* goes on to state that the so-called Law of the Union Doctrine is, ". . . so manifestly indefensible that no other court and no

other commentator has ever taken seriously the suggestion that the Supreme Court actually espouses it." [*Engdahl* at page 1048].

To illustrate merely one area of logical inconsistency in the Law of the Union Doctrine, it should be noted that consent to a compact needn't be express or direct, or even reflected in any specific act or resolution [See *Virginia* v. *Tennessee*, 148 U.S. 503, 521 (1893) and *Green* v. *Biddle*, 21 U.S. (8 Wheat.) 1, 85-86 (1823)]. Consent being granted in such an informal manner is understandable, but it is an unusual concept, at best, that Congress may enact into federal law all of the intricate stipulations of a compact merely by establishing judicial districts or confirming federal appointments [See *Engdahl* at page 1016]. Furthermore, since consent may properly precede as well as follow the making of a compact, the view that consent transforms a compact into a federal law leads necessarily to a conclusion that there may be an unconstitutional delegation of congressional legislative powers to the state [See *Virginia* v. *Tennessee*, supra; 1 Sutherland, *Statutory Construction* §310 (1943); and *Engdahl* at pages 1017-1018].

District Courts and the United States Court of Appeals for the Second Circuit have refused to extend the *Colburn* case beyond its ruling that ". . . the construction of such a [bi-state] compact sanctioned by Congress by virtue of Article 1, §10 cl. 3 of the Constitution, involves a federal 'title, right, privilege or immunity,' which when specially set up and claimed in a state court may be reviewed here on certiorari under §237(b) of the Judicial Code [the predecessor of

§1257(3)]." [310 U.S. at 427]. See *Revoli Trucking Corp.* v. *American Transport Lines* [167 F. Supp. 937, 939 (E.D.N.Y. 1958)]; *Delaware River Joint Toll Bridge Comm.* v. *Stolz* [146 F. Supp. 241 (D.N.J. 1956)]; *Delaware River Joint Toll Bridge Comm.* v. *Miller* [147 F. Supp. 270 (E.D. Pa. 1956)]; *Port Authorities Bond Holders Protective Committee* v. *Port of New York Authority* [270 F. Supp. 947 (S.D.N.Y. 1967) and 387 F. 2d 259 (2d Cir. 1967)].

The question of whether or not original federal jurisdiction under 28 U.S.C. §1331(a) exists in cases involving construction of interstate compacts becomes one of great and recurring significance as regional government becomes more common and interstate compacts proliferate. The Court should squarely face the issue for purposes of establishing rules of universal application.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

DOWNEY, BRAND, SEYMOUR
& ROHWER

By: Ronald N. Paul
Counsel for Petitioner
555 Capitol Mall, Suite 1050
Sacramento, California 95814

EXHIBIT "A"

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LEAGUE TO SAVE LAKE TAHOE, SIERRA CLUB, WALTER BAILEY, and BRIAN HAYES, *Plaintiffs/Appellants,* vs. TAHOE REGIONAL PLANNING AGENCY, THOMAS RALEY, PARK CATTLE CO., HARVEY'S WAGON WHEEL, INC., *Defendants/Appellees.*	No. 73-3611 OPINION

[November 22, 1974]

Appeal from the United States District Court
for the Eastern District of California

Before: KOELSCH and CHOY, Circuit Judges,
and RENFREW,* District Judge

RENFREW, District Judge:

In 1968 the states of California and Nevada entered into a compact to create a regional agency with extensive powers to regulate and control development within the Lake Tahoe Basin in order to protect the natural resources and ecological balance of the area.[1] In December of 1969 Congress gave its consent to the

---

*The Honorable Charles B. Renfrew, United States District Judge, Northern District of California, sitting by designation.

[1]Cal.Govt. Code §§66800 et seq. (West Supp. 1974), Nev.-Rev.Stat. 277.190 et seq. (1971). Article I of the Compact expresses the joint concern over the area and establishes the purposes of the compact:

"(a) It is found and declared that the waters of Lake Tahoe and other resources of the Lake Tahoe region are threatened with deterioration or degeneration, which may endanger the natural beauty and economic productivity of the region.

"(b) It is further declared that by virtue of the special conditions and circumstances of the natural ecology, developmental pat-

compact as provided for in Article I, §10, cl. 3 of the United States Constitution.[2]

The Tahoe Regional Planning Compact ("Compact") created Tahoe Regional Planning Agency ("TRPA") and charged it with responsibility for developing within ninety days a regional interim plan and, within eighteen months, a regional plan which would reflect a wide variety of economic, environmental and social considerations. The Compact also directed the TRPA to adopt all ordinances, rules, regulations and policies necessary to effectuate the regional interim plan and the regional plan.

The League to Save Lake Tahoe, the Sierra Club and two individuals who reside in the Tahoe area ("appellants") brought this action for declaratory and injunctive relief alleging, basically, that defendant TRPA has failed to comply with the legal requirements of the Compact. They contend that TRPA has failed to adopt a regional plan as required by the Compact, has failed to adopt certain implementing ordinances mandated by the Compact,

---

tern, population distribution and human needs in the Lake Tahoe region, the region is experiencing problems of resource use and deficiencies of environmental control.

"(c) It is further found and declared that there is a need to maintain an equilibrium between the region's natural endowment and its manmade environment, to preserve the scenic beauty and recreational opportunities of the region, and it is recognized that for the purpose of enhancing the efficiency and governmental effectiveness of the region, it is imperative that there be established an area-wide planning agency with power to adopt and enforce a regional plan of resource conservation and orderly development, to exercise effective environmental controls and to perform other essential functions, as enumerated in this title.

[2]Article I, §10 cl. 3 of the United States Constitution provides:

"No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay."

The consent was given in Pub.L. 91-148, 83 Stat. 360 (1969), an act which contained, in addition to the consent and the language of the Compact, a general statement of Congressional purpose and several specific conditions imposed by Congress. Appellants' complaint did not raise any question as to the construction or application of any of these Congressionally imposed conditions.

has adopted other ordinances which are defective, and has failed to prepare a detailed environmental analysis as required by the Compact. In particular, appellants charge that defendant TRPA has granted "approval"[3] to the development projects of defendants Thomas Raley, Park Cattle Company and Harvey's Wagon Wheel, Inc., in violation of the Compact.

Jurisdiction in the district court was predicated solely on 28 U.S.C. §1331(a).[4] On defendants' motion, the District Court dismissed the action without prejudice on the ground that it lacked jurisdiction over the subject matter of plaintiffs' claims. Appellants now appeal that determination.

The appeal here presents but a single issue, yet one of first impression: whether a federal court has original jurisdiction over this suit as one arising under the Constitution, laws or treaties of the United States. For the reasons developed in this opinion, we hold that it does, and we reverse the decision below.

Appellants advance two arguments in support of their contention that the construction of a Congressionally sanctioned interstate compact is a matter of federal law. First, they argue that Congressional consent transforms the Compact into a law of the United States. Second, they urge that the construction of an inter-

[3]Affirmative approval has been given only to the project of defendant Raley. TRPA, by a split vote, failed to approve the project of defendants Park Cattle Company and Harvey's Wagon Wheel. Appellees contend that by operation of Article VI(k) of the Compact these projects may be deemed approved. That article provides:

> "Whenever under the provisions of this article or any ordinance, rule, regulation or policy adopted pursuant thereto, the agency is required to review or approve any proposal, public or private, the agency shall take final action, whether to approve, to require modification or to reject such proposal, within 60 days after such proposal is delivered to the agency. If the agency does not take final action within 60 days, the proposal shall be deemed approved."

Appellants urge that a split vote on these projects cannot constitute failure to take "final action" within the meaning of Article VI(k) and, alternatively, that if those projects would be deemed approved, they violate the provisions of the Compact.

[4]28 U.S.C. §1331(a) provides:

> "The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."

state compact requires the application of federal "common law" which is law of the United States within the meaning of §1331 (a). Because we agree with the first argument asserted by appellants, we have no occasion to consider the second.

For this case to be within the purview of §1331(a), a right or immunity created by the Constitution or laws of the United States must be an essential element of plaintiffs' claim.[5] The gravamen of the complaint is the alleged failure of TRPA to comply with the requirements of the Compact in various particulars. To determine the nature and scope of these requirements requires a construction of the Compact. Such construction, therefore, forms an essential element of the complaint. Thus, if the Compact can properly be characterized as a "law" of the United States, then federal jurisdiction is established.

Counsel have not cited nor has independent research revealed any decision by the Supreme Court or any of the Circuit Courts of Appeals which deals directly with this issue.[6]

The Supreme Court has, however, in a series of cases considered the status of interstate compacts in connection with its certiorari jurisdiction. See *Delaware River Com'n. v. Colburn*, 310 U.S. 419 (1940); *Dyer v. Sims*, 341 U.S. 22 (1951). In these cases the Court addressed the question of whether a claim based

[5]*Gully v. First National Bank*, 299 U.S. 109, 112 (1936).

[6]Several district court decisions have been cited as authority that §1331(a) jurisdiction does not lie in cases involving interstate compacts. We have reviewed these decisions carefully, and we do not find them to be persuasive and, in some cases, even apposite to the precise issue before us.

In *Delaware River Joint Toll Bridge Com'n. v. Stults*, 146 F.Supp. 241 (D.N.J. 1956), plaintiff's claims were for money had and received; the compact was involved only because it was the legislation which had created the plaintiff Commission. Plaintiff's claims thus did not "arise under" the compact and regardless of the federal or nonfederal character of that compact, jurisdiction under §1331(a) would have been improper. Relying upon *Gully v. First National Bank*, 299 U.S. 109, 112 the court held that since the respective rights of the parties were to be determined by local law, no federal question was presented.

In *Port Authority Bondholder Pro. Comm. v. Port of N.Y. Auth.*, 270 F.Supp. 947 (S.D.N.Y. 1967), the district court dismissed an action involving the construction of an interstate compact, concluding that such a claim did not arise under a law of the United States within the meaning of §1331(a). Although the Court of Appeals for the Second Circuit,

on an interstate compact is cognizable under the provision for Supreme Court review, by writ of certiorari, of judgments of the highest state court where "any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or

---

per Friendly, J., did not reach this question, it indicated that the District Court may have erred in its conclusion. 387 F.2d 259, 261 n. 1 (2d Cir. 1967). The Court of Appeal found that the allegations in that case concerning actions of the Port Authority beyond the scope of Congressional consent to the compact gave rise to a claim under the Constitution. The court also found, however, that the constitutional claim was insubstantial in light of prior adverse decisions of the United States Supreme Court and affirmed the district court on that basis. 387 F.2d at 262-263.

In *Kheel v. Port of New York Authority*, 331 F.Supp. 118, 120-121 (S.D.N.Y. 1971), *aff'd on other grounds*, 457 F.2d 46 (2d Cir. 1972), *cert. denied*, 469 U.S. 983 (1972), the district court dismissed a claim involving the same compact but did so on the grounds adopted by the Second Circuit in Bondholders.

In *Rivoli Trucking Corp. v. American Export Lines*, 167 F.Supp. 937 (E.D.N.Y. 1958), the court found no federal question jurisdiction under §1331(a) in a compact case, but the decision contains an alternate holding that the plaintiffs' claims were within the exclusive jurisdiction of the Federal Maritime Board. 167 F.Supp. at 940. Further, in reaching its conclusion on §1331(a) jurisdiction, the court relied primarily on *Hinderlider v. La Plata River and Cherry Creek Ditch Co.*, 304 U.S. 92 (1938). See note 8, *infra*, for a discussion of the impact of *Delaware River Com'n v. Colburn*, 310 U.S. 419 (1940) upon *Hinderlider*.

Of the district court opinions which have been examined, only one, in dictum, cogently argues in any detail against §1331(a) jurisdiction in a case arising under an interstate compact, and it predates the critically important decision of the Supreme Court in *Petty v. Tennessee-Missouri Com'n.*, 359 U.S. 275 (1959). The case, *Delaware River Joint Toll Bridge Com'n. v. Miller*, 147 F.Supp. 270 (E.D. Pa. 1956), involved the compact considered in *Stults, supra*, and presented similar claims for money had and received. The decision, like *Stults*, rests on the failure of the complaint to satisfy the requirements of *Gully v. First National Bank*. See 147 F.Supp. at 274. Judge Van Dusen, the author of the opinion, went on to indicate that, *Gully* problems aside, rights asserted under an interstate compact lack the requisite federal character to sustain jurisdiction under §1331(a). The subsequent decision of the Supreme Court in *Petty v. Tennessee-Missouri Com'n., supra*, holding that the construction of a compact sanctioned by Congress is a matter of federal law, has, however, eroded the major premise of Judge Van Dusen's argument. See notes 11 and 12, *infra*, for a full discussion of that argument and the effect of *Petty* upon it.

In contrast to the authorities cited by appellees, appellants rely upon a single case which they argue supports their position. That case, in-

statutes of * * * the United States." 28 U.S.C. §1257(3). In *Colburn* the Court unequivocally answered this question in the affirmative, holding that "the construction of such a [bi-state] compact sanctioned by Congress by virtue of Article I, §10 cl. 3 of the Constitution, involves a federal 'title, right, privilege or immunity, which when specially set up and claimed in a state court may be reviewed here on certiorari under §237(b) of the Judicial Code [the predecessor of §1257(3)]." 310 U.S. at 427. The Court has reaffirmed this holding in *Dyer*, 241 U.S. at 26.

In reaching this interpretation of the certiorari statute, *Colburn* and its progeny have firmly established that the construction of a compact, by virtue of Congressional consent, presents a federal question. This result has its genesis in the case of *Pennsylvania v. The Wheeling & Belmont Bridge Co.*, 54 U.S. (13 How.) 518 (1851), wherein the court stated that "this compact [the Virginia-Kentucky Compact of 1789] by the sanction of Congress, has become a law of the Union. What further legislation can be desired for judicial action?" 54 U.S. at 565.[7] Although later deci-

---

volving the very bi-state compact here in issue, sustained jurisdiction under 28 U.S.C. §1331(a). *Brown v. Tahoe Regional Planning Agency*, Civil No. R12773 (D.Nev. May 23, 1973). That case is not persuasive here because it involved a claim for inverse condemnation clearly arising under the Fifth Amendment. The court did note, however, that "[t]he case arises under the Constitution *and laws* of the United States, involving the interpretation and application of Public Law 91-148 [The Tahoe Regional Planning Compact] and of the Fifth Amendment to the Constitution of the United States. *Brown, supra*, at p. 2 (emphasis supplied).

[7]The Virginia-Kentucky Compact provided that "the use and navigation of the River Ohio, so far as the territory of the proposed state [Kentucky], or the territory that shall remain within the limits of this Commonwealth [Virginia] lies thereon, shall be free and common to the citizens of the United States." 54 U.S. at 564-565. *Wheeling* was a suit by Pennsylvania to enjoin the construction of a bridge in Virginia across the Ohio River. The Court first noted that, to constitute an actionable nuisance, the bridge had to be found in violation of state or federal law. Since the State of Virginia had expressly approved the construction of the bridge, the only source of a possible violation was federal law. The court concluded that the Virginia-Kentucky Compact of 1789 was, by virtue of congressional consent, a federal law, and that the bridge contravened the provision of that compact set forth above. The requested relief was therefore granted. 54 U.S. at 578.

sions created considerable doubt as to the continued validity of that doctrine, Colburn has put these doubts to rest.[8]

While the Court in *Colburn* felt it unnecessary to clearly articulate the basic premise of its decision, we conclude after careful investigation that the result there was based upon the implicit finding that the interstate compact involved must have been deemed to have been a "statute of the United States" within the meaning of 28 U.S.C. §1257(3). Neither logic nor policy justifies

---

[8]The Court in *Colburn* did not explicitly set forth a doctrinal basis for its conclusion that a claim based on the construction of an interstate compact involves a federal right, title or immunity for purposes of sustaining jurisdiction in certiorari cases from state courts. Appellees strenuously argue that *Colburn* does not rest on the law of the Union doctrine but rather upon the applicability of federal common law to the construction of certain compacts. In support of this interpretation of *Colburn*, they rely on *People v. Central Railroad*, 79 U.S. 455 (1872), and *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92 (1938). This reliance is misplaced. Clearly both cases rejected the law of the Union doctrine, 79 U.S. at 455 and 304 U.S. at 109. It is equally clear, however, from a careful reading of *Colburn* that *Colburn* disapproves both holdings on this point. The Court said in *Colburn*: "In *People v. Central Railroad* • • • jurisdiction of this Court to review a judgment of a state court construing a compact between states was denied on the ground that the compact was not a statute of the United States and that the construction of the Act of Congress giving consent was in no way drawn into question, nor was any right set up under it. This decision has long been doubted, see *Hinderlider v. La Plata Co.*, 304 U.S. 92, 110, note 12, and we now conclude that the construction of such a compact sanctioned by Congress by virtue of Article I §10 Clause 3 of the Constitution, involves a federal 'title, right, privilege or immunity' which when 'specially set up and claimed' in a state court may be reviewed here on certiorari • • •." 310 U.S. at 427.

It can hardly be disputed that *Colburn* has expressly overruled *Central Railroad* on the question of the viability of the law of Union doctrine.

In arriving at our decision we do not overlook that the law of the Union doctrine may be said, under some circumstances, to present certain theoretical problems, e.g., impermissible delegation of congressional legislative power to the states in cases where Congressional consent precedes the compact. For an exhaustive analysis of this subject, see Engdahl, *Construction of Interstate Compacts: A Questionable Federal Question*, 51 Va.L.Rev. 987, 1013-1026 (1965). The possibility, however, that there be problems in potential cases does not alter our duty to follow the mandate of *Colburn*.

a different interpretation of the substantially similar language in 28 U.S.C. §1331(a).[9] Therefore, a case involving the construction of an interstate compact which requires a judicial determination of the nature and scope of obligations set forth therein "arises" under the "laws" of the United States within the meaning of §1331(a).[10]

We do not, of course, ignore the significant differences between original jurisdiction in the federal courts and certiorari jurisdiction in the Supreme Court. The test for determining whether a case involves substantial federal issues at the very outset of litigation differs from the test for making that determination after the case has passed through a state judicial system. For this reason in cases in which there is a claim of original jurisdiction, there is the *Gully* requirement that the federal question form an "essential element" of the plaintiff's complaint.[11] No such require-

---

[9]In pertinent part the two statutes provide:

"Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:

* * * * *

"(3) By writ of certiorari, * * * where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties, or statutes of, or commission held or authority exercised under, the United States." 28 U.S.C. §1257.

"The District Courts shall have original jurisdiction of all civil actions wherein the matter in controversy * * * arises under the Constitution, laws, or treaties of the United States." 28 U.S.C. §1331(a).

Both an able commentator and an eminent jurist have concluded that the *Colburn* line of decisions establishes the propriety of §1331(a) jurisdiction over claims arising under an interstate compact. See Engdahl, *Construction of Interstate Compacts: A Questionable Federal Question, supra,* 51 Va.L.Rev. at 1026. and the opinion of Judge Henry J. Friendly in *Port Authority Bondholders Pro. Comm. v. Port of N.Y. Auth., supra,* 387 F.2d at 261 n. 1.

[10]See the text of the opinion accompanying note 5, *supra.*

[11]The cases which discuss the distinction between §1257(3) jurisdiction and §1331(a) jurisdiction confirm this view. See *Jordine v. Walling,* 185 F.2d 662 (3d Cir. 1950) and *Douchette v. Vincent,* 194 F.2d 834 (1st Cir. 1952). Both cases involved the question whether §1331(a) jurisdiction exists over a claim for maintenance and cure based on general

ment exists with respect to certiorari jurisdiction. There it is the record in the state tribunal and not the original complaint which must support the claim of a federal question. See Mishkin, *The Federal Question in the District Courts*, 53 Colum.L.Rev. 157, 164-165. To erect, in addition, a distinction between what constitutes a federal law for certiorari purposes and what constitutes a federal law for original jurisdiction purposes would be artificial, unnecessary and irrational; we decline, therefore, to do so. The Compact must be deemed a law of the United States under *Colburn* and the requirements of *Gully* have been satisfied in this case. Therefore, jurisdiction should have been sustained in the district court under §1331(a).

Furthermore, post-*Colburn* decisions of the Supreme Court and strong policy considerations support this result. Appellees have argued that the need for a final arbiter of compact disputes requires only certiorari jurisdiction, and that the desirability of having state courts decide matters of state law, such as zoning and land use control, before that arbitration is undertaken precludes original jurisdiction in the federal courts.[12] We disagree. The Supreme Court has made it clear that the construction of an

---

maritime law, as distinguished from a suit in admiralty brought under the admiralty rules. The cases reached contrary conclusions on this point and the controversy was resolved against §1331(a) jurisdiction in *Romero v. International Term. Co.*, 358 U.S. 354, 359-380 (1959). In the course of resolving the question concerning general maritime law, which is of course not relevant here, both lower courts noted the distinction between certiorari and original jurisdiction over claims based on federal law. Analysis of those cases reveals, however, that this distinction does not rest upon differing constructions of the two statutes as to what constitutes a law of the United States; rather it rests upon the differing stages of litigation at which the jurisdictional determination must be made, a difference to which the *Gully* requirement responds. *Jordine, supra*, 185 F.2d at 668; *Douchette, supra*, 194 F.2d at 845-846.

[12]Perhaps the most articulate statement of this position is contained in Judge Van Dusen's opinion in *Delaware River Joint Toll Bridge Com'n v. Miller, supra*, 147 F.Supp. at 274 nn. 14 and 16. That the opinion predates *Petty, supra*, considerably diminishes the force of the arguments made therein. See note 13, *infra*. Moreover, Judge Van Dusen relied heavily upon the distinction between §1257(3) jurisdiction and §1331(a) jurisdiction made in *Jordine, supra*, and also considered in *Douchette, supra*. As we pointed out in note 11, *supra*, those cases do not support the conclusion reached in *Miller*.

interstate compact is a matter of federal law, not the law of the party states. *Petty v. Tennessee-Missouri Bridge Com'n.*, *supra*, 359 U.S. at 279-280.[13] State court consideration, therefore, cannot

---

[13]*Petty* represents a significant clarification of prior law on this point. *Colburn* and *Dyer* held that a claim based on an interstate compact involved a federal right, title or immunity. In *Dyer*, however, Mr. Justice Frankfurter, speaking for the Court, intimated that this characterization did not contemplate that federal law would supplant state law as the source of the governing rules of decision in a compact case; rather that the Supreme Court would be the final expositor and arbiter of the applicable state laws. 341 U.S. at 28-31. In *Dyer* the Supreme Court of Appeals of West Virginia had held that certain provisions of the West Virginia Constitution prohibited West Virginia's participation in the Ohio River Valley Water Sanitation Compact. The Supreme Court concluded that "[t]he Supreme Court of Appeals of the State of West Virginia is, for exclusively State purposes, the ultimate tribunal in construing the meaning of her Constitution." 341 U.S. at 28. The Court went on, however, to conclude that, insofar as a state constitution affected obligations under an interstate compact, the highest state court was *not* the ultimate tribunal in construing that constitution and reversed on the basis of its own construction of the applicable provisions of the West Virginia Constitution. "A State cannot be its own ultimate judge in a controversy with a sister State. To determine the nature and scope of obligations as between States, whether they arise through the legislative means of compact or the 'federal common law' governing interstate controversies (*Hinderlider v. La Plata Co.*, 304 U.S. 92, 110), is the function and duty of the Supreme Court of the Nation. Of course every deference will be shown to what the highest court of a State deems to be the law and policy of its State, particularly when recondite or unique features of local law are urged. Deference is one thing; submission to a State's own determination of whether it has undertaken an obligation, what that obligation is, and whether it conflicts with a disability of the State to undertake it is quite another." 341 U.S. at 28.

Petty involved the question of whether a "sue and be sued" clause in an interstate compact constituted a waiver of the party states' immunity under the Eleventh Amendment. The court conceded that under the applicable decisions of both the party states, such a clause would not constitute a waiver of immunity but concluded, by reference to the *Congressional* intent, that the clause constituted such a waiver. 359 U.S. at 279-281. Mr. Justice Frankfurter strongly dissented on the basis of his opinion in *Dyer*. 359 U.S. at 284-285. Thus, any rights or obligations granted by an interstate compact are federal, not state, in character. As a result, there can be no doubt of the propriety of original jurisdiction in the federal courts in the case before us, despite the legitimate and far-reaching interests of the party states. See *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 674-679 (1974).

constitute a necessary predicate to proper construction of a compact.

Moreover, interstate compacts frequently involve not only local concerns of the states involved, but also important national interests. *Dyer v. Sims, supra*, 341 U.S. at 27. See also *Petty, supra*, 359 U.S. at 282, n. 1. The instant Compact deals with much more than mere local concerns such as zoning and land use. It addresses the environmental problems of an area not subject to the control of a single state. In addition to the specific Congressional concern for the subject of this Compact, evidenced by the statement of purpose accompanying the consent,[14] the national legislature has with increasing frequency evinced a strong interest in solving environmental problems, which by their very nature transcend state boundaries, through interstate cooperation. See, *e.g.*, The Clean Air Act, 42 U.S.C. §§1857 et seq., specially §§1857 and 1857a, and the National Environmental Policy Act, 42 U.S.C. §§4331 et seq.[15] The result reached here serves those important national interests.

---

[14]The text of that statement is as follows:

"*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress Assembled,* That in order to encourage the wise use and conservation of the waters of Lake Tahoe and the resources of the area around said lake, the consent of the Congress is hereby given to the Tahoe Regional Planning Compact * * *. Public Law 91-148, December 18, 1969."

[15]In pertinent part the Clean Air Act provides:

"(a) The Congress finds—

"(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

"(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

* * * * *

"(4) that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.

"(b) The purposes of this subchapter are—

It is therefore most appropriate to sustain jurisdiction under 28 U.S.C. §1331(a) over a case involving the construction of the Tahoe Regional Planning Compact.

"(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

* * * * *

"(4) to encourage and assist the development and operation of regional air pollution control programs." 42 U.S.C. §1857.

"(a) The [Administrator] shall encourage cooperative activities by the States and local governments for the prevention and control of air pollution; encourage the enactment of improved and, so far as practicable in the light of varying conditions and needs, uniform State and local laws relating to the prevention and control of air pollution; and encourage the making of agreements and compacts between States for the prevention and control of air pollution; encourage the enactment of improved and, so far as practicable in the light of varying conditions and needs, uniform State and local laws relating to the prevention and control of air pollution; and encourage the making of agreements and compacts between States for the prevention and control of air pollution.

* * * * *

"(c) The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for (1) cooperative effort and mutual assistance for the prevention and control of air pollution and the enforcement of their respective laws relating thereto, and (2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts. No such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by Congress. It is the intent of Congress that no agreement or compact entered into between States after November 21, 1967, which relates to the control and abatement of air pollution in an air quality control region, shall provide for participation by a State which is not included (in whole or in part) in such air quality control region." 42 U.S.C. §1857a.

The Congressional Statement of Policy in the National Environmental Policy Act specifies:

"(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man,

Accordingly, we reverse the decision below and remand for further proceedings consistent with this opinion.

---

declares that it is the continuing policy of the Federal Government, *in cooperation with State and local governments,* and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." 42 U.S.C. §4331 (emphasis supplied).

The Act concerns itself primarily with the activities of the federal government. The reference, however, to cooperation with state and local governments in §4331 and the awareness, reflected in the legislative history, that many, if not most, environmental problems cross state boundaries (see House Report 91-378, 1969 U.S. Congressional and Administrative News 2751 at 1257-1258) indicate the national importance of, and interest in, interstate attempts to address environmental concerns.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO 12-2-74—400

EXHIBIT "B"

In the

United States District Court

for the

Eastern District of California

LEAGUE TO SAVE LAKE TAHOE, SIERRA CLUB, WALTER BAILEY, and BRIAN HAYES,

Plaintiffs,

vs.

TAHOE REGIONAL PLANNING AGENCY, THOMAS RALEY, PARK CATTLE CO., HARVEY'S WAGON WHEEL, INC.,

Defendants.

CIVIL NO.

S-2989

MEMORANDUM AND ORDER

Presently pending in this action are motions to dismiss by the several defendants. A hearing was held on these motions on the 26th day of November, 1973.

The Court, after having reviewed the memoranda of points and authorities relating to the motions, and after having listened to the arguments presented at the above-mentioned hearing, concludes that the Court lacks jurisdiction over the subject matter of the action.

Plaintiffs, in their complaint, urge jurisdiction upon the Court pursuant to 28 U.S.C. Section 1331(a). That section reads:

> "The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."

Specifically, the plaintiffs allege that "(t)his action arises under the Compact Clause of the Federal Constitution, Article 1, Section 10, Clause 3, and the Tahoe Regional Planning Compact, Pub.L. 91-148, 83 Stat. 360 (1969).

This action does not arise under the Constitution of the United States. When a suit does not really and substantially involve a dispute or controversy as to the effect or construction of the Constitution, upon the determination of which the result depends, then it is not a suit arising under the Constitution. *Shreveport* v. *Cole*, 129 U.S. 36, 32 L.Ed. 489 (1889). Here, no question concerning the validity of Congress's consent to the interstate compact is presented. It is clear, there-

fore, that this action does not arise under the Constitution.

Neither does this action arise under the laws of the United States. As early as 1872, the Supreme Court has recognized that the assent of Congress to an interstate compact is not a "law of the United States." *New York* v. *Central Railroad Co. of New Jersey*, 12 Wall. 455, 20 L.Ed. 458 (1872). In *Hinderlider* v. *LaPlata River and Cherry Creek Ditch Co.*, 304 U.S. 92, 82 L.Ed. 1202 (1938), the Court said: "The assent of Congress to the compact between Colorado and New Mexico does not make it a 'treaty or statute of the United States' within the meaning of Section 237(a) of the Judicial Code [the predecessor of Section 1331(a)]." 304 U.S. at 109, 82 L.Ed. at 1212.

More recently, in *Rivoli Trucking Corp.* v. *American Transport Lines*, 167 F.Supp. 937 (E.D. N.Y. 1958), the Court dismissed plaintiff's complaint for lack of jurisdiction, saying:

> "The plaintiff has grounded its complaint on this Act of Congress in the mistaken belief that this is a law of the United States within the meaning of 28 U.S.C. Section 1331. Neither the said compact between the States of New York and New Jersey nor the Act of Congress consenting thereto are laws or treaties of the United States within the meaning of 28 U.S.C. Section 1331." 167 F.Supp. at 939.

Accord, *Delaware River Joint Toll Bridge Comm.* v. *Stolts*, 146 F.Supp. 241 (D. N.J. 1956); *Delaware River Joint Toll Bridge Comm.* v. *Miller*, 147 F.Supp. 270 (E.D. Pa. 1956).

In short, Congressional consent to the Tahoe Regional Planning Compact does not cause the sanctioned compact to become federal law. Congress, whose legislative power is limited by the Constitution, has no power to legislate with respect to the subject matter of many sanctioned compacts. Indeed, the Tahoe Regional Planning Compact grants the Tahoe Regional Planning Agency powers which may not have been within Congress's power to grant. For example, it seems clear that Congress could not regulate zoning within the Tahoe Basin.

Plaintiffs also misconstrue the Compact itself. Article VI(b) of the Compact provides that actions "shall be brought in a court of the state where the violation is committed or where the property affected by a civil action is situated, unless the action is brought in a federal court." This is simply a venue provision, and such a provision does not confer jurisdiction. The States of California and Nevada carefully avoided any possible conflict with federal law. It is not this court's conclusion that an action involving the Tahoe Regional Planning Agency cannot be brought in federal court; and where jurisdiction does exist, the action may be brought without regard to the venue provision of the Compact.

A close examination of the Compact as a whole provides further evidence that Congress, in consenting to the Compact, did not intend to raise it to the status of a federal law within the meaning of 28 U.S.C. Section 1331(a). Article VIII(c) reads, in pertinent part: "A state party to this Compact may withdraw therefrom by enacting a statute repealing the Compact." It is

impossible for this Court to conclude that a federal law can be voided by a unilateral action of a single state.

Further, Article VIII, Section 5, of the Compact provides, in part, that:

> "Nothing contained in this Act or in the Compact consented to shall in any way affect the powers, rights, or obligations of the United States, or the applicability of any law or regulation of the United States in, over, or to the region or waters which are the subject of the Compact . . ."

If Congress had intended the Compact to be a federal law within the meaning of 28 U.S.C. Section 1331(a), there would be no need for the above language.

For the foregoing reasons, IT IS HEREBY ORDERED that defendants' motions to dismiss are granted.

The Clerk is accordingly directed to enter a final judgment of dismissal of this action without prejudice.

The clerk is further directed to forward to all counsel of record a copy of this Memorandum and Order.

Done and dated this 27th day of November, 1973.

James F. Battien
United States District Judge

EXHIBIT "C"

PUBLIC LAW 91-148
91st CONGRESS, S. 118
DECEMBER 18, 1969

AN ACT

To grant the consent of the Congress to the Tahoe Regional Planning Compact, to authorize the Secretary of the Interior and others to cooperate with the planning agency thereby created, and for other purposes.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, that in order to encourage the wise use and conservation of the waters of Lake Tahoe and of the resources of the area around said lake, the consent of the Congress is hereby given to the Tahoe Regional Planning Compact heretofore adopted by the States of California and Nevada, which compact reads as follows:

"TAHOE REGIONAL PLANNING AGENCY

"Article I. Findings and Declarations of Policy

"(a) It is found and declared that the waters of Lake Tahoe and other resources of the Lake Tahoe region are threatened with deterioration or degeneration, which may endanger the natural beauty and economic productivity of the region.

"(b) It is further declared that by virtue of the special conditions and circumstances of the natural ecology, developmental pattern, population distribution, and human needs in the Lake Tahoe region, the region is

experiencing problems of resource use and deficiencies of environmental control.

"(c) It is further found and declared that there is a need to maintain an equilibrium between the region's natural endowment and its manmade environment, to preserve the scenic beauty and recreational opportunities of the region, and it is recognized that for the purpose of enhancing the efficiency and governmental effectiveness of the region, it is imperative that there be established an areawide planning agency with power to adopt and enforce a regional plan of resource conservation and orderly development, to exercise effective environmental controls and to perform other essential functions, as enumerated in this title.

"Article II. Definitions

"As used in this compact:

"(a) 'Region' includes Lake Tahoe, the adjacent parts of the Counties of Douglas, Ormsby, and Washoe lying within the Tahoe Basin in the State of Nevada, and the adjacent parts of the Counties of Placer and El Dorado lying within the Tahoe Basin in the State of California, and that additional and adjacent part of the County of Placer outside of the Tahoe Basin in the State of California which lies southward and eastward of a line starting at the intersection of the basin crestline and the north boundary of Section 1, thence west to the northwest corner of Section 3, thence south to the intersection of the basin crestline and the west boundary of Section 10; all sections referring to Township 15 North, Range 16 East, M.D.B. & M. The region defined and described herein shall be as precisely de-

lineated on official maps of the agency.

"(b) 'Agency' means the Tahoe Regional Planning Agency.

"(c) 'Governing Body' means the governing board of the Tahoe Regional Planning Agency.

"(d) 'Regional plan' shall mean the long-term general plan for the development of the region.

"(e) 'Interim plan' shall mean the interim regional plan adopted pending the adoption of the regional plan.

"(f) 'Planning commission' means the advisory planning commission appointed pursuant to paragraph (h) of Article III.

"Article III. Organization

"(a) There is created the Tahoe Regional Planning Agency as a separate legal entity.

"The governing body of the agency shall be constituted as follows:

"One member appointed by each of the County Boards of Supervisors of the Counties of El Dorado and Placer and one member appointed by the City Council of the City of South Lake Tahoe. Each member shall be a member of the city council or county board of supervisors which he represents and, in the case of a supervisor, shall be a resident of a county supervisorial district lying wholly or partly within the region.

"One member appointed by each of the boards of county commissioners of Douglas, Ormsby and Washoe Counties. Any member so appointed shall be a resident of the county from which he is appointed and may be, but is not required to be:

"(1) A member of the board which appoints him; and

"(2) A resident of or the owner of real property in the region, as each board of county commissioners may in its own discretion determine. The manner of selecting the person so to be appointed may be further prescribed by county ordinance. A person so appointed shall before taking his seat on the governing body disclose all his economic interests in the region, and shall thereafter disclose any further economic interest which he acquires, as soon as feasible after he acquires it. If any board of county commissioners fail to make an appointment required by this paragraph within 30 days after the effective date of this act or the occurrence of a vacancy on the governing body, the governor shall make such appointment. The position of a member appointed by a board of county commissioners shall be deemed vacant if such member is absent from three consecutive meetings of the governing body in any calendar year.

"One member appointed by the Governor of California and one member appointed by the Governor of Nevada. The appointment of the California member is subject to Senate confirmation; he shall not be a resident of the region and shall represent the public at large. The member appointed by the Governor of Nevada shall not be a resident of the region and shall represent the public at large.

"The Administrator of the California Resources Agency or his designee and the Director of the Nevada Department of Conservation and Natural Resources or his designee.

"(b) The members of the agency shall serve without

compensation, but the expenses of each member shall be met by the body which he represents in accordance with the law of that body. All other expenses incurred by the governing body in the course of exercising the powers conferred upon it by this compact unless met in some other manner specifically provided, shall be paid by the agency out of its own funds.

"(c) The term of office of the members of the governing body shall be at the pleasure of the appointing authority in each case, but each appointment shall be reviewed no less often than every 4 years.

"(d) The governing body of the agency shall meet at least monthly. All meetings shall be open to the public to the extent required by the law of the State of California or the State of Nevada, whichever imposes the greater requirement, applicable to local governments at the time such meeting is held. The governing body shall fix a date for its regular monthly meeting in such terms as 'the first Monday of each month,' and shall not change such date oftener than once in any calendar year. Notice of the date so fixed shall be given by publication at least once in a newspaper or combination of newspapers whose circulation is general throughout the region and in each county a portion of whose territory lies within the region. Notice of any special meeting except an emergency meeting, shall be given by so publishing the date, place and agenda at least 5 days prior to the meeting.

"(e) The position of a member of the governing body shall be considered vacated upon his loss of any of the qualifications required for his appointment and in

such event the appointing authority shall appoint a successor.

"(f) The governing body shall elect from its own members a chairman and vice chairman, whose terms of office shall be two years, and who may be reelected. If a vacancy occurs in either office, the governing body may fill such vacancy for the unexpired term.

"(g) A majority of the members of the governing body from each state shall constitute a quorum for the transaction of the business of the agency. A majority vote of the members present representing each state shall be required to take action with respect to any matter. The vote of each member of the governing body shall be individually recorded. The governing body shall adopt its own rules, regulations and procedures.

"(h) An advisory planning commission shall be appointed by the agency, which shall consist of an equal number of members from each state. The commission shall include but shall not be limited to: the chief planning officers of Placer County, El Dorado County, and the City of South Lake Tahoe in California and the Counties of Douglas, Ormsby and Washoe in Nevada, the Placer County Director of Sanitation, the El Dorado County Director of Sanitation, the county health officer of Douglas County or his designee, the county health officer of Washoe County or his designee, the Chief of the Bureau of Environmental Health of the Health Division of Department of Health, Welfare and Rehabilitation of the State of Nevada or his designee, the executive officer of the Lahontan Regional Water Quality Control Board or his designee, the executive officer of the Tahoe Regional Planning

Agency who shall act as chairman and at least four lay members each of who shall be a resident of the region.

"(i) The agency shall establish and maintain an office within the region. The agency may rent or own property and equipment. Every plan, ordinance and other record of the agency which is of such nature as to constitute a public record under the law of either the State of California or the State of Nevada shall be open to inspection and copying during regular office hours.

"(j) Each authority charged under this compact or by the law of either state with the duty of appointing a member of the governing body of the agency shall by certified copy of its resolution or other action notify the Secretary of State of its own state of the action taken. Upon receipt of certified copies of the resolutions or notifications appointing the members of the governing body, the Secretary of State of each respective state shall notify the Governor of the state who shall, after consultation with the Governor of the other state, issue a concurrent call for the organization meeting of the governing body at a location determined jointly by the two governors.

"(k) Each state may provide by law for the disclosure or elimination of conflicts of interest on the part of members of the governing body appointed from that state.

"Article IV. Personnel

"(a) The governing body shall determine the qualification of, and it shall appoint and fix the salary of, the executive officer of the agency, and shall employ such other staff and legal counsel as may be necessary to

execu · the powers and functions provided for under this act or in accordance with any intergovernmental contracts or agreements the agency may be responsible for administering.

"(b) Agency personnel standards and regulations shall conform insofar as possible to the regulations and procedures of the civil service of the State of California or the State of Nevada, as may be determined by the governing body of the agency, and shall be regional and bistate in application and effect; provided that the governing body may, for administrative convenience and at its discretion, assign the administration of designated personnel arrangements to an agency of either state, and provided that administratively convenient adjustments be made in the standards and regulations governing personnel assigned under intergovernmental agreements.

"(c) The agency may establish and maintain or participate in such additional programs of employee benefits as may be appropriate to afford employees of the agency terms and conditions of employment similar to those enjoyed by employees of California and Nevada generally.

"Article V. Planning

"(a) In preparing each of the plans required by this article and each amendment thereto, if any, subsequent to its adoption, the planning commission after due notice shall hold at least one public hearing which may be continued from time to time, and shall review the testimony and any written recommendations presented at such hearing before recommending the plan

or amendment. The notice required by this paragraph shall be given at least 20 days prior to the public hearing by publication at least once in a newspaper or combination of newspapers whose circulation is general throughout the region and in each county a portion of whose territory lies within the region.

"The planning commission shall then recommend such plan or amendment to the governing body for adoption by ordinance. The governing body may adopt, modify or reject the proposed plan or amendment, or may initiate and adopt a plan or amendment without referring it to the planning commission. If the governing body initiates or substantially modifies a plan or amendment, it shall hold at least one public hearing thereon after due notice as required in this paragraph.

"If a request is made for the amendment of the regional plan by:

> "(1) A political subdivision a part of whose territory would be affected by such amendment; or
> "(2) The owner or lessee of real property which would be affected by such amendment,

the governing body shall complete its action on such amendment within 60 days after such request is delivered to the agency.

"(b) Within 15 months after the formation of the agency, the planning commission shall recommend a regional plan. Within 18 months after the formation of the agency, the governing body shall adopt a regional plan. After adoption, the planning commission and governing body shall continuously review and maintain the regional plan. The regional plan shall consist

of a diagram, or diagrams, and text, or texts setting forth the projects and proposals for implementation of the regional plan, a description of the needs and goals of the region and a statement of the policies, standards and elements of the regional plan.

"The regional plan shall include the following correlated elements:

"(1) A land use plan for the integrated arrangement and general location and extent of, and the criteria and standards for, the uses of land, water, air, space and other natural resources within the region, including but not limited to, an indication or allocation of maximum population densities.

"(2) A transportation plan for the integrated development of a regional system of transportation, including but not limited to, freeways, parkways, highways, transportation facilities, transit routes, waterways, navigation and aviation aids and facilities, and appurtenant terminals and facilities for the movement of people and goods within the region.

"(3) A conservation plan for the preservation, development, utilization, and management of the scenic and other natural resources within the basin, including but not limited to, soils, shoreline and submerged lands, scenic corridors along transportation routes, open spaces, recreational and historical facilities.

"(4) A recreation plan for the development, utilization and management of the recreational resoruces of the region, including but not limited to, wilderness and forested lands, parks and parkways, riding and hiking trails, beaches and playgrounds, marinas and other recreational facilities.

"(5) A public services and facilities plan for the general location, scale and provision of public services and facilities, which, by the nature of their function, size, extent and other characteristics are necessary or appropriate for inclusion in the regional plan.

"In formulating and maintaining the regional plan, the planning commission and governing body shall take account of and shall seek to harmonize the needs of the region as a whole, the plans of the counties and cities within the region, the plans and planning activities of the state, federal and other public agencies and nongovernmental agencies and organizations which affect or are concerned with planning and development within the region. Where necessary for the realization of the regional plan, the agency may engage in collaborative planning with local governmental jurisdictions located outside the region, but contiguous to its boundaries. In formulating and implementing the regional plan, the agency shall seek the cooperation and consider the recommendations of counties and cities and other agencies of local government, of state and federal agencies, of educational institutions and research organizations, whether public or private, and of civic groups and private individuals.

"(c) All provisions of the Tahoe regional general plan shall be enforced by the agency and by the states, counties and cities in the region.

"(d) Within 60 days after the formation of the agency, the planning commission shall recommend a regional interim plan. Within 90 days after the formation of the agency, the governing body shall adopt a regional interim plan. The interim plan shall consist of

statements of development policies, criteria and standards for planning and development, of plans or portions of plans and projects and planning decisions, which the agency finds it necessary to adopt and administer on an interim basis in accordance with the substantive powers granted to it in this agreement.

"(e) The agency shall maintain the data, maps and other information developed in the course of formulating and administering the regional plan and interim plan, in a form suitable to assure consistent view of developmental trends and other relevant information for the availability of and use by other agencies of government and by private organizations and individuals concerned.

"(f) All provisions of the interim plan shall be enforced by the agency and by the states, the counties and cities.

"Article VI. Agency's Powers

"(a) The governing body shall adopt all necessary ordinances, rules, regulations and policies to effectuate the adopted regional and interim plans. Every such ordinance, rule or regulation shall establish a minimum standard applicable throughout the basin, and any political subdivision may adopt and enforce an equal or higher standard applicable to the same subject of regulation in its territory. The regulations shall contain general, regional standards including but not limited to the following: water purity and clarity; subdivision; zoning; tree removal; solid waste disposal; sewage disposal; land fills, excavations, cuts and grad-

ing; piers, harbors, breakwaters, or channels and other shoreline developments; waste disposal in shoreline areas; waste disposal from boats; mobile home parks; house relocation; outdoor advertising; flood plain protection; soil and sedimentation control; air pollution; and watershed protection. Whenever possible without diminishing the effectiveness of the interim plan or the general plan, the ordinances, rules, regulations and policies shall be confined to matters which are general and regional in application, leaving to the jurisdiction of the respective states, counties and cities the enactment of specific and local ordinances, rules, regulations and policies which conform to the interim or general plan.

"Every ordinance adopted by the agency shall be published at least once by title in a newspaper or combination of newspapers whose circulation is general throughout the region. Except an ordinance adopting or amending the interim plan or the regional plan, no ordinance shall become effective until 60 days after its adoption. Immediately after its adoption, a copy of each ordinance shall be transmitted to the governing body of each political subdivision having territory within the region.

"Interim regulations shall be adopted within 90 days from the formation of the agency and final regulations within 18 months after the formation of the agency.

"Every plan, ordinance, rule, regulation or policy adopted by the agency shall recognize as a permitted and conforming use any business or recreational establishment which is required by law of the state in which it is located to be individually licensed by the state, if such business or establishment:

"(1) Was so licensed on February 5, 1968, or was licensed for a limited season during any part of the calendar year immediately preceding February 5, 1968.

"(2) Is to be constructed on land which was so zoned or designated in a finally adopted master plan on February 5, 1968, as to permit the construction of such a business or establishment.

"(b) All ordinances, rules, regulations and policies adopted by the agency shall be enforced by the agency and by the respective states, counties and cities. The appropriate courts of the respective states, each within its limits of territory and subject matter provided by state law, are vested with jurisdiction over civil actions to which the agency is a party and criminal actions for violations of its ordinances. Each such action shall be brought in a court of the state where the violation is committed or where the property affected by a civil action is situated, unless the action is brought in a federal court. For this purpose, the agency shall be deemed a political subdivision of both the State of California and the State of Nevada.

"(c) Except as otherwise provided in paragraph (d), all public works projects shall be reviewed prior to construction and approved by the agency as to the project's compliance with the adopted regional general plan.

"(d) All plans, programs and proposals of the State of California or Nevada, or of its executive or administrative agencies, which may substantially affect, or may specifically apply, to the uses of land, water, air, space and other natural resources in the region, including

but not limited to public works plans, programs and proposals concerning highway routing, design and construction, shall be referred to the agency for its review, as to conformity with the regional plan or interim plan, and for report and recommendations by the agency to the executive head of the state agency concerned and to the Governor. A public works project which is initiated and is to be constructed by a department of either state shall be submitted to the agency for review and recommendation, but may be constructed as proposed.

"(e) The agency shall police the region to ensure compliance with the general plan and adopted ordinances, rules, regulations and policies. If it is found that the general plan, or ordinances, rules, regulations and policies are not being enforced by a local jurisdiction, the agency may bring action in a court of competent jurisdiction to ensure compliance.

"(f) Violation of any ordinance of the agency is a misdemeanor.

"(g) The agency is hereby empowered to initiate, negotiate and participate in contracts and agreements among the local governmental authorities of the region, or any other intergovernmental contracts or agreements authorized by state or federal law.

"(h) Each intergovernmental contract or agreement shall provide for its own funding and staffing, but this shall not preclude financial contributions from the local authorities concerned or from supplementary sources.

"(i) Whenever a new city is formed within the region, the membership of the governing body shall be

increased by two additional members, one appointed by, and who shall be a member of, the legislative body of the new city, and one appointed by the Governor of the state in which the city is not locate. A member appointed by the Governor of California is subject to Senate confirmation.

"(j) Every record of the agency, whether public or not, shall be open for examination to the Legislative Analyst of the State of California and the Fiscal Analyst of the State of Nevada.

"(k) Whenever under the provisions of this article or any ordinance, rule, regulation or policy adopted pursuant thereto, the agency is required to review or approve any proposal, public or private, the agency shall take final action, whether to approve, to require modification or to reject such proposal, within 60 days after such proposal is delivered to the agency. If the agency does not take final action within 60 days, the proposal shall be deemed approved.

"Article VII. Finances

"(a) Except as provided in paragraph (e), on or before December 30 of each calendar year the agency shall establish the amount of money necessary to support its activities for the next succeeding fiscal year commencing July 1 of the following year. The agency shall apportion not more than $150,000 of this amount among the counties within the region on the same ratio to the total sum required as the full cash valuation of taxable property within the region in each county bears to the total full cash valuation of taxable prop-

erty within the region. Each county in California shall pay the sum allotted to it by the agency from any funds available therefor and may levy a tax on any taxable property within its boundaries sufficient to pay the amount so allocated to it. Each county in Nevada shall pay such sums from its general fund or from any other moneys available therefor.

"(b) The agency may fix and collect reasonable fees for any services rendered by it.

"(c) The agency shall be strictly accountable to any county in the region for all funds paid by it to the agency and shall be strictly accountable to all participating bodies for all receipts and disbursements.

"(d) The agency is authorized to receive gifts, donations, subventions, grants, and other financial aids and funds.

"(e) As soon as possible after the ratification of this compact, the agency shall estimate the amount of money necessary to support its activities:

"(1) For the remainder of the then-current fiscal year; and

"(2) If the first estimate is made between January 1 and June 30, for the fiscal year beginning on July 1 of that calendar year.

"The agency shall then allot such amount among the several counties, subject to the restriction and in the manner provided in paragraph (a), and each county shall pay such amount.

"(f) The agency shall not obligate itself beyond the moneys due under this article for its support from the several counties for the current fiscal year, plus any moneys on hand or irrevocably pledged to its support

from other sources. No obligation contracted by the agency shall bind either of the party states or any political subdivision thereof.

"Article VIII. Miscellaneous

"(a) It is intended that the provisions of this compact shall be reasonably and liberally construed to effectuate the purposes thereof. Except as provided in paragraph (c), the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining state and in full force and effect as to the state affected as to all severable matters.

"(b) The agency shall have such additional powers and duties as may hereafter be delegated or imposed upon it from time to time by the action of the Legislature of either state concurred in by the Legislature of the other.

"(c) A state party to this compact may withdraw therefrom by enacting a statute repealing the compact. Notice of withdrawal shall be communicated officially and in writing to the Governor of the other state and to

the agency administrators. This provision is not severable, and if it is held to be unconstitutional or invalid, no other provision of this compact shall be binding upon the State of Nevada or the State of California.

"(d) No provision of this compact shall have any effect upon the allocation or distribution of interstate waters or upon any appropriative water right."

Sec. 2. The Secretary of the Interior and the Secretary of Agriculture are authorized, upon request of the Tahoe Regional Planning Agency, to cooperate with said agency in all respects compatible with carrying out the normal duties of their Departments.

Sec. 3. The consent to the compact by the United States is subject to the condition that the President may appoint a nonvoting representative of the United States to the Tahoe Regional Planning governing board.

Sec. 4. Any additional powers conferred on the agency pursuant to Article VII (b) of the compact shall not be exercised unless consented to by the Congress.

Sec. 5. Nothing contained in this Act or in the compact consented to shall in any way affect the powers, rights, or obligations of the United States, or the applicability of any law or regulation of the United States in, over, or to the region or waters which are the subject of the compact, or in any way affect rights owned or held by or for Indians or Indian tribes subject to the jurisdiction of the United States.

Sec. 6. The right is hereby reserved by the Congress or any of its standing committees to require the disclosure and furnishing of such information and data by or concerning the Tahoe Regional Planning Agency as

is deemed appropriate by the Congress or such committee.

Sec. 7. The right to alter, amend or repeal this Act is expressly reserved.

Approved December 18, 1969.

LEGISLATIVE HISTORY

HOUSE REPORT No. 91-650 (Comm. on the Judiciary)

SENATE REPORT No. 91-510 (Comm. on the Judiciary)

CONGRESSIONAL RECORD, Vol, 115 (1969):

Nov. 5: Considered and passed Senate
Dec. 1: Considered and passed House, amended
Dec. 3: Senate agreed to House amendment

EXHIBIT "D"

28 U.S.C. §1331(a):

"The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."

EXHIBIT "E"

Article I, §10 cl. 3 of the United States Constitution:

"No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay."